IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

RPFC.No. 426 of 2007()

MC.291/2005 of FAMILY COURT, KASARAGOD
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REVISION PETITIONER/RESPONDENT

MOHAMED ALI, AGED 45 YEARS,
S/O. MAMMUNHI, RESIDING AT PANJAM P.O.
ICHILANGOD, VIA, MANGALPADY,KASARGOD DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS: PETITIONERS

1. BEEFATHIMA, AGED 36 YEARS,
D/O. IBRAHIM, RESIDING AT ZAM ZAM MANZIL
BANDIYOD P.O. MANGALPADI VIA,
KASARGOD DISTRICT.

2. ABDUL RAUF, AGED 19 YEARS,
S/O.MOHAMED ALI,ZAM ZAM MANZIL
BANDIYOD P.O. MANGALPADI VIA,
KASARGOD DISTRICT.

3. ABDUL AZEEZ, AGED 16 YEARS,
S/O.MOHAMED ALI,ZAM ZAM MANZIL
BANDIYOD P.O. MANGALPADI VIA,
KASARGOD DISTRICT.

4. MOHAMMED ASHRAF, AGED 15 YEARS,
S/O.MOHAMED ALI,ZAM ZAM MANZIL
BANDIYOD P.O. MANGALPADI VIA,
KASARGOD DISTRICT.

BY /

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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R.P.(F.C) NO. 426 OF 2007

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Dated this the 15th day of October, 2007.

ORDER

The revision petitioner, who is the husband of the 1st respondent and father of respondents 2 to 4, was the counter petitioner in MC No. 291/2005 on the file of Family Court, Kasaragod. The wife and three children of the revision petitioner filed the said M.C. application on 04.07.2005 originally before the Chief Judicial Magistrate, Kasaragod. Subsequently, on the establishment of the Family Court, Kasaragod, the application was made over to that court. Initially on 02.09.2006 the Family Court passed an exparte order directing the revision petitioner to pay maintenance at the rate of Rs.1,500/- per month to the wife and at the rate of Rs.1,000/- per month to each of the three children and made payable from the date of petition. That order was challenged by the revision petitioner before this Court by filing R.P(F.C) No. 70/2007 on 29.05.2007. This Court set aside the order on condition that he continued to pay maintenance to

the wife and children at the rate of Rs.1000/- per month and Rs.750 each per month respectively. It was thereafter that the Family Court passed the impugned order.

2. The marriage between the revision petitioner and the 1st respondent was some time in the year 1990. Three children were born in that wedlock. The wife alleged that during coverture the revision petitioner subjected her to cruelty by demanding more money and gold and some time in the year 2002 he abandoned the revision petitioner and her children and refused to maintain them and married another woman and was living with her in her residence. According to the wife, the revision petitioner was a lorry driver earning Rs.10,000/- per month besides having income from landed properties.

3. The application for maintenance was opposed by the revision petitioner contending inter alia as follows:

It is true that he married the 1st applicant and three children were born in that wedlock. But the allegation of cruelty was not true. He was a loving husband. But, his wife was squandering away the money which was gifted to her at the time of her

marriage and she had been on a spending spree and finally she left the matrimonial home without his consent and started living with her parents. She did not return to her matrimonial home in spite of persuasion by the revision petitioner. It was on account of his loneliness in life, caused due to the failure on the part of the 1st applicant-wife to return to the matrimonial home, that he was forced to contract another marriage. The 2nd applicant has already attained majority and he is an autorickshaw driver having his own autorickshaw. He is ready to pay monthly maintenance at the rate of Rs.400/- to each of the minor children.

4. The Family Court came to the conclusion that the defence set up by the revision petitioner was not true. It also took notice of the fact that there was not even an offer by the revision petitioner to take back his wife and children or to provide maintenance to his wife. That court also held that his contention that he was living with his second wife that he has no house of his own and that was why he was not taking the 1st applicant to his own house to stay with him was false and that he was not even prepared to live with her in her own house. That court also

found that there was failure on the part of the revision petitioner in discharging marital obligations towards his 1st wife and children. The trial court also found that the claim for separate maintenance by the wife and children was not unjustifiable. With regard to the means of the revision petitioner, from his admission that he was a driver of tempo van, it was found that he has means to pay the quantum of maintenance as ordered by that Court. The above findings are recorded after a careful evaluation of the oral and documentary evidence and this Court sitting in revision will be loath to interfere with those concurrent findings particularly when the fact remains that the matter had been remanded once to the Family Court. Under these circumstances, I do not find any justification to interfere with the impugned order awarding separate maintenance to the wife and children as also the quantum of maintenance. With regard to the 2nd applicant, if he has ascertained majority then the revision petitioner will have no more obligation to maintain that child. While disposing of the earlier revision, this Court had directed the revision petitioner to deposit before the court below a total

amount of Rs.3250/- every month as maintenance. Now as per the impugned order also, deducting the quantum of maintenance to the 2nd applicant who has attained majority, the revision petitioner's monthly liability is only Rs.3500/-. I see no reason to interfere with the impugned order which is confirmed. This revision petition is dismissed. The revision petitioner is given three months time to deposit the entire arrears failing which the respondent shall be entitled to execute the order.

V. RAMKUMAR, JUDGE.

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